

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2021-2022 Regular Session**

AB 1580 (Committee on Judiciary)

Version: April 5, 2021

Hearing Date: June 8, 2021

Fiscal: No

Urgency: No

TSG

**SUBJECT**

Enforcement of money judgments: examination

**DIGEST**

This bill sets forth procedures for identifying a natural person who must appear – and can be held accountable for failing to appear – at a debtor’s examination on behalf of an organization, when that organization fails to specify someone else who will appear on its behalf.

**EXECUTIVE SUMMARY**

Frequently, when a court reaches a decision in a case, it orders the losing party (the judgment debtor) to give money to the winning party (the judgment creditor). If judgment debtor does not pay up voluntarily, the judgment creditor has a few different options for trying to collect what it is owed. One option for the judgment creditor is to force the judgment debtor to attend a debtor examination: a court appearance under oath in which the judgment creditor may inquire about the debtor’s property and obtain liens on that property to satisfy the outstanding debt. Why would a judgment debtor – who is already refusing to pay – bother to show up at a debtor’s examination? In the case of an individual debtor, the answer is clear: existing law empowers the court to issue a warrant for the arrest of an individual debtor who does not appear. If the judgment debtor is an organization and no individual is called to appear, however, there is no clear remedy if nobody shows up on behalf of the organization. Accordingly, organizational judgment debtors can effectively get away with ignoring an order to appear at a debtor’s examination. This bill seeks to eliminate such impunity by identifying individual organizational officers who must represent the organization at the debtor’s examination – and can be held responsible if they do not – if the organization does not designate some other individual to appear.

The bill is authored by the Assembly Judiciary Committee. Support comes from worker advocates who believe the bill will help eliminate scenarios in which companies who owe wages simply fail to send anyone represent them at a debtor’s examination, leaving the unpaid worker with no recourse. There is no opposition on file.

**PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Requires a corporation to file, on the form prescribed by the Secretary of State, a statement containing the names and complete business or residence addresses of its chief executive officer, chief financial officer, and secretary. (Corp. Code §§ 1502 and 2117.)
- 2) Requires limited partnerships to file, on the form prescribed by the Secretary of State, a certificate of limited partnership containing the name and address of each general partner. (Corp. Code § 15902.01.)
- 3) Requires limited liability companies (LLCs) to file, on the form prescribed by the Secretary of State, a statement containing the names and complete business or residence addresses of its managers, or if there are none, the name and business or residence address of each member. (Corp. Code § 17702.09.)
- 4) Defines “judgment creditor” as a person in whose favor a judgment is rendered. (Code Civ. Proc. § 680.240.)
- 5) Defines “judgment debtor” as a person against whom a judgment is rendered. (Code Civ. Proc. § 680.250.)
- 6) Defines “money judgment” as that part of a judgment which requires the payment of money. (Code Civ. Proc. § 680.270.)
- 7) Allows a judgment creditor to apply for a court order requiring a judgment debtor to appear before either the court or a court-appointed referee for a debtor’s examination: a proceeding in which the debtor must furnish information to aid in enforcement of the money judgment. (Code Civ. Proc. § 708.110(a).)
- 8) Requires the judgment creditor to personally serve a copy of the order for examination on the judgment debtor at least ten days before the date of the examination. (Code Civ. Proc. § 708.110(d).)
- 9) Requires the order to contain the following statement, printed in 14-point boldfaced type: “NOTICE TO JUDGMENT DEBTOR. If you fail to appear at the time and place specified in this order, you may be subject to arrest and punishment for contempt of court and the court may make an order requiring you to pay the reasonable attorney’s fees incurred by the judgment creditor in this proceeding.” (Code Civ. Proc. § 708.110(d).)
- 10) Provides that third-party witnesses may be required to appear and testify in an examination proceeding. (Code Civ. Proc. § 708.130.)
- 11) Permits an order to appear for an examination to be served on a partnership, association, LLC, or other organization. (Code Civ. Proc. § 708.150(a).)

- 12) Specifies that if an order for examination is served on an organization and requires the appearance of a specified individual, then the individual specified must appear for the examination, though that individual may be accompanied by one or more officers, directors, managing agents, or other persons familiar with the organization's property and debts. (Code Civ. Proc. § 708.150(b).)
- 13) Specifies that if an order for examination is served on an organization and does not require the appearance of a specified individual, then the organization must designate one or more officers, directors, managing agents, or other persons familiar with the organization's property and debts to appear and be examined. The order must advise the organization of its duty to make such a designation. (Code Civ. Proc. § 708.150(a) and (c).)
- 14) Permits an organization to appear at an examination through any authorized officer, director, or employee, whether or not that person is an attorney. (Code Civ. Proc. § 708.150(d).)
- 15) Permits a court, if a person fails to appear for a debtor's examination despite having been properly served, to issue a warrant for the person's arrest. (Code Civ. Proc. § 708.170(a).)

This bill:

- 1) Establishes procedures for enforcing a court order to appear for a debtor's examination under oath if that order is directed to a corporation, partnership, association, trust, LLC, or other organization.
- 2) Requires that, if the organization fails to obey such an order by designating an officer, director, managing agent or other person familiar with the organization's property and debts to appear, the order shall be deemed to have been made to, and require the appearance of the following:
  - a) if the organization is a corporation registered with the Secretary of State, the first natural person named in the corporation's most recent filing with the Secretary of State as, in order, its chief financial officer, chief executive officer, or secretary;
  - b) if the organization is an LLC registered with the Secretary of State, the first natural person named in the LLC's most recent filing with the Secretary of State as a manager or member;
  - c) if the organization is a limited partnership registered with the Secretary of State, the first natural person named in the limited partnership's most recent filing with the Secretary of State as a general partner; or
  - d) if no natural person is registered with the Secretary of State's Office under (a) through (c), above, then a natural person identified by the judgment creditor as being familiar with the property and debts of the organization. This identification must be supported by an affidavit or declaration, signed by the

judgment debtor, setting forth the facts supporting the identification. The affidavit or declaration must be served on the organization with the order.

- 3) Provides that service of an order to appear for a debtor's examination on the organization by any method provided for under the Code of Civil Procedure or the Corporations Code, including service on the agent of the organization designated for service of process, shall be deemed effective service of the order upon the individuals identified under (a) through (d) of (2), above.
- 4) Declares that the court's power to issue an arrest warrant for failure to appear for a debtor's examination extends to the individuals identified under (a) through (d) of (2), above.
- 5) Declares that the provisions above must be strictly construed by a court, and may not be varied, whether by local rule or otherwise.

### COMMENTS

#### 1. About debtors' examinations

For those less familiar with the legal system, it sometimes comes as a surprise that winning a court case can be only half of the battle. Even if a judge rules in your favor and orders the other side to pay you whatever money you are owed as a result, you still have to find a way to collect. Collecting is easy enough if the losing party simply pays up. Not uncommonly, however, people and businesses who lose in court are unwilling or unable to pay voluntarily.

The law provides a number of different mechanisms that judgment creditors – the people or businesses that won in court – can use to try collect the money they are owed from the judgment debtors – the people or businesses that lost in court. For example, a judgment creditor can have a lien imposed on any property that the judgment debtor owns. (Code Civ. Proc. §§ 697.010 *et seq.*) A judgment creditor can arrange to have the money taken out of the judgment debtor's financial accounts through a bank levy. (Code Civ. Proc. 700.140 *et seq.*) A judgment creditor can also arrange to have some of the judgment debtor's wages garnished for purposes of satisfying the debt owed. (Code Civ. Proc. §§ 706.010 *et seq.*)

In order for any of these methods to work, however, the judgment creditor has to know about the property, accounts, assets, and sources of the income the judgment debtor has. Debtor's examinations can play an important role in this process. A debtor's examination is a court hearing during which the judgment creditor can ask the judgment debtor all about the judgment debtor's assets and finances and the judgment debtor must respond, under oath. (Code Civ. Proc. § 708.150.) The judgment creditor can also oblige third parties to attend, if those third parties may owe money to the judgment debtor or possess property that may belong to the judgment debtor. (Code

Civ. Proc. § 708.120.) Through the debtor's examination or follow-up collections actions, the judgment creditor gains the information and leverage needed to force payment of the judgment debt.

2. The problem that this bill is intended to address

Debtor's examinations can be powerful tools for making judgment debtors accountable to pay what the court has determined they owe. Under existing law, however, there is a discrepancy between how the law treats individuals subject to a debtor's examination and how it treats organizations that are subject to a debtor's examination. When a court orders a specific individual to appear for a debtor's examination and that individual is properly served with notice of the time and place for the debtor's examination, then the court is authorized to issue a warrant for that individual's arrest if that individual nonetheless fails to show up. (Code Civ. Proc. § 708.170.) In a case where the judgment debtor is an organization, however, a specific individual may not be ordered to appear. Instead, upon receiving the order to attend the debtor's examination, the organization is supposed to designate someone to appear on its behalf. (Code Civ. Proc. § 708.150.)

A problem arises, however, if the organization does not designate anyone to appear on its behalf and no one shows up at the debtor's examination: there is no one to hold accountable. Since no individual has been named to appear, the court cannot issue an arrest warrant, as it would in the case of an individual who failed to appear at a debtor's examination as required. As a result, there is little consequence for an organizational judgment debtor if it fails to make an appearance at a debtor's examination. As the author of the bill, the Assembly Judiciary Committee reports having heard from several attorneys that it is common for unscrupulous organizations to take advantage of this loophole. These organizations frustrate the efforts of judgment creditors to hold the organizations accountable to pay their judgments by declining to designate or send any individual to represent them at the debtor's examination. With no one to punish, both the courts and the judgment creditor are left with no recourse for this deliberate abuse of the process.

This bill endeavors to solve the problem by designating default individuals who are deemed to have been served with the notice to appear at the debtor's examination if the organization does not designate anyone else instead. In most instances, these default individuals will be part of the upper management of the organization -- officers, managers, or general partners -- whose role has been registered with the Secretary of State's Office. For example, in the case of a corporation, the default individual is the person most recently registered as the corporation's chief financial officer. Similarly, the default individual for an LLC is the first person listed as a manager or member, and the default person for a limited partnership is the first person listed as a general partner. These individuals are publicly associated with the organization and their roles are such that it is reasonable to presume that they have some knowledge about its assets as well as at least some authority over management of the organization. If these individuals do

not possess sufficient knowledge about the organization, the organization can designate another individual to appear at the debtor's examination in their place. (Code Civ. Proc. § 708.150(a).)

In the event that no one is registered with the Secretary of State's Office in the roles that would make them the default person to appear on behalf of the judgment debtor organization, the bill provides a backstop. In such an instance, the bill empowers the judgment creditor to identify some other individual who must show up to represent the organization. In order to name such person, however, the judgment creditor must submit an affidavit or declaration setting forth the factual basis for the judgment creditor's belief that the person named is familiar with the property and debts of the organization.

### 3. Due process considerations

Both the U.S. and California Constitutions mandate that the government provide due process of law before depriving people of life, liberty, or property. (U.S. Const., amend. V; Cal. Const., art. I, Sec. 7.) This bill raises the possibility that individuals could be deprived of their liberty through arrest for failure to appear at a debtor's examination on behalf of an organization. To pass constitutional muster, therefore, adequate mechanisms to ensure due process must be included.

The U.S. Supreme Court has not given any hard and fast meaning to "due process of law."<sup>1</sup> According to the Court: "due process, unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place, and circumstances. Due process is flexible and calls for such procedural protections as the particular situation demands." (*Mathews v. Eldridge* (1976) 424 U.S. 319, 334. Internal quotations and citations omitted.) At a minimum, however, due process of law always entails "certain basic safeguards such as notice of the charges or issue, the opportunity for a meaningful hearing, and an impartial decision maker." (Chemerinsky, *Constitutional Law Policies and Principles*, Fifth Edition (2015), p. 606.)

In the case of this bill, notice is provided to the individual who may later be subject to arrest in the form of service of the order to appear at the debtor's examination. Although it is unlikely that the specific, named individual will receive the notice directly, service of legal notices often takes place indirectly (*see, e.g.,* Code Civ. Proc. § 415.20) and such indirect service has been found to satisfy due process. (*Korea Exch. Bank v. Yang* (1988) 200 Cal.App.3d 1471, 1474.)

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<sup>1</sup> The federal and state due process clauses are similar and the California Supreme Court has indicated that jurisprudence interpreting the federal due process clause is appropriate guidance for interpreting the state due process clause as well. (*Today's Fresh Start, Inc. v. Los Angeles County Office of Education* (2013) 57 Cal. 4th 197, 212.)

The process proposed by this bill also contains several different avenues through which the individual could obtain a hearing before being subjected to the possibility of arrest. Most obviously, the individual can simply appear at the debtor's examination or make sure that the organization designates another person to attend, thereby assuring that no arrest warrant will issue. Alternatively, if the individual ordered to appear is not able to appear at the debtor's examination for some reason, or believes that they should not have been ordered to appear, the individual has at least two options. Prior to the debtor's examination, the individual could seek a protective order from the court modifying or rescinding the order to appear. (Code Civ. Proc. 708.200.) After the debtor's examination, the individual could bring a motion to recall and quash any arrest warrant issued against the individual due to their absence. (*See, e.g., Davis v. Superior Court* (2020) 50 Cal.App.5th 607.)

Thus, the bill appears to offer sufficient notice and opportunities for a hearing to satisfy the requirements of due process.

#### 4. Arguments in support of the bill

According to the author:

AB 1580 solves a longstanding problem that both individuals and businesses face when they win cases in court, and are unable to collect judgments. This bill is meant to ensure that the law treats judgment debtors who avoid paying judgments in a similar manner, regardless of whether these debtors are individuals or entities (such as corporations, limited liability companies, partnerships, etc.). A business should not be able to refuse to pay its judgments and simultaneously continue operating without consequence.

In support, the Wage Justice Center writes:

It is not fair that a corporation can be found liable for defrauding its customers, cheating its employees out of their wages, or selling dangerous products, yet escape paying the judgment, all while continuing to conduct business as usual. AB 1580 would safeguard against this all-too-common practice by helping ensure that corporate officers must appear for court-ordered debtor's examinations, just as individual debtors currently do.

### SUPPORT

California Employment Lawyers Association  
Wage Justice Center

**OPPOSITION**

None known

**RELATED LEGISLATION**

Pending Legislation: None known.

Prior Legislation:

AB 3364 (Asm. Com. on Judiciary, Ch. 36, Stats. 2020) added limited liability companies to the list of organizational entities that are expressly subject to the possibility of having to appear for a debtor's examination.

**PRIOR VOTES:**

Assembly Floor (Ayes 78, Noes 0)

Assembly Judiciary Committee (Ayes 11, Noes 0)

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